

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of

Amendment of Part 90 of the Commission's	)	PR Docket No. 93-144
Rules to Facilitate Future Development of	)	RM-8117, RM-8030,
SMR Systems in the 800 MHz Frequency Band	)	RM-8029

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and

Implementation of Section 309(j) of the	)	
Communications Act -- Competitive Bidding	)	PP Docket No. 93-253
800 MHz SMR	)	

To: The Commission

COMMENTS

T & K Communications Systems, Inc. (T&K), by and through counsel, hereby files comments in opposition to the proposals contained within the above captioned rule making and in support states the following:

T&K's interest in this matter and its qualifications to make meaningful comment are a matter of record within this proceeding, including the earlier rule making from which this proceeding follows, and as a matter of record before the Commission. T&K is an analog SMR operator in upstate New York, providing dispatch services to members of the public.

T&K is vexed by the Commission's proposals which appear to be designed for the benefit of no more than three entities within the industry and, possibly, for the

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Commission itself. There is nothing contained within these proposals that suggests that the Commission has balanced the injury to be sustained by traditional analog SMR operators and the subscribers they serve, as against the purported benefits to be enjoyed by adoption of the proposals. That this balancing test is imperative arises out of the Commission's duty to determine the competitive impact of its regulation in accord with Section 309 of the Communications Act; the Commission's duty to promote the interests of small businesses which arises out of Congresses recent grant of auction authority; and the Commission's duty to engage in reasoned decision making. There is an unfortunate paucity of evidence within the FNPRM that suggests that the Commission has properly performed such duties in its promulgation of this matter.

Absent the Commission's analysis, T&K hereby supplies some of that required analysis for the Commission's consideration.

#### Anti-competitive Result:

Adoption of the proposal to allow frequency swapping on allegedly "fully comparable" spectrum is, at best, illusory. The source of this unidentified spectrum is unknown and T&K strongly doubts that any spectrum which qualifies exists. Even a cursory examination of the spectrum available throughout the MTAs of greatest interest would demonstrate that no ESMR would be able to swap one-for-one 800 MHz band channels. Accordingly, the yet unidentified spectrum which would be employed for this purpose must not be located within the 800 MHz band. This begs

the question of where this spectrum might be. T&K suggests that the vague references are to 450 MHz band channels which might become available in the future via refarming. Yet, those channels are still not sufficiently identified and their use is still not codified, so that no entity, including the Commission, may reasonably find that the channels are "fully comparable". Since no such spectrum exists, this proposal must be summarily rejected since execution of the proposal is impossible.

However, even if possible, the concurrent injury to small businesses who have reasonably relied upon grants of authority is so extreme that it cannot be justified under any circumstances. Resources which ordinarily would be applied to development and growth of such systems would be diverted toward accommodation of any swapping edict, and the result for traditional operators and their subscribers would be costly chaos. Meanwhile, benefitting ESMR operators would gain an advantage in the marketplace by retarding the growth of smaller, competitive systems.

Such a result is clearly anti-competitive as it seeks to benefit entities which possess market dominance to the detriment of smaller entities who are made to bear the greater burden. When one further considers the additional advantages attendant to a market based, MTA-wide authority which might be given to those same dominant carriers, it is apparent that the entire FNPRM may be fairly viewed as another vehicle toward market consolidation to the direct injury of competition.

### Support of Small Businesses:

The recent auction authority provided to the Commission specifically includes language which mandates the Commission use of such authority to the benefit of small businesses. Employing any kind of logical argument, the Commission's proposed use of auction authority to grant MTA-based licenses cannot be found to be beneficial to small businesses. Quite the contrary. It minimizes the substantial effort put forth by analog operators and maximizes the Commission's desire to find something, anything, that justifies additional auctions and opportunities to fill the U.S. Treasury. T&K offers no opposition to the Commission's use of auctions to decide authority to operate on newly-allocated spectrum. T&K does, however, believe that the use of auction authority in the manner proposed within this docket is ill-advised and a formula for failure.

In many instances, only Nextel Communications, Inc. would be interested or qualified to participate. How much money will be raised for the U.S. Treasury via single bidder auctions? Assuming there exists something of true value to auction, what opportunity is provided to small business to compete in such auctions as against a multi-billion dollar corporation, like Nextel Communications, Inc.? It is apparent that the level playing field which auctions are intended to somehow promote, would be harder to find in this arena than the Commission's painstaking efforts in devising rules for auction of PCS blocks.

### Harm To The Commission's Processes:

Frequency swapping, MTA licensing, and auctions will require a substantial amount of the Commission's resources. The chaos which might be caused from realigning frequency use throughout the United States is too disruptive to imagine. Co-channel problems, intermodulation problems, short-spacing problems, and the like will all be laid upon the Commission's door, begging immediate resolution. At the same time the Commission will be required to process the thousands of applications for modification of existing licenses which must arise out of adoption of the proposals. This activity and these uses of the Commission's resources cannot be justified given the fact that neither the public nor the majority of the SMR industry will benefit by such Commission action. Indeed, most will painfully suffer.


### Conclusion:

The only "winners" to be found, therefore, from the Commission's adoption can hold their celebration in a telephone booth, their numbers are so small. The Commission should recognize that the constituency of proponents simply does not represent the industry or even a substantial portion thereof and should act accordingly. Absent a great, compelling, overwhelming reason for adoption - a reason which has

not been articulated thus far - the Commission should summarily reject these proposals and avoid visiting harm upon the industry.

Respectfully submitted,  
T&K COMMUNICATIONS, INC.

By

  
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Dated: 1/5/95